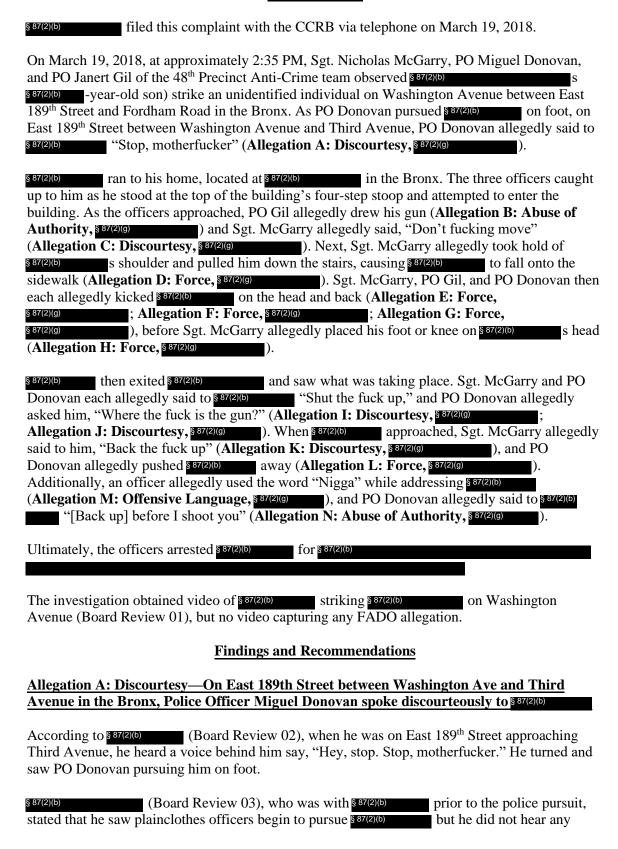
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	✓ Force	✓ Discourt.	U.S.
Samuel Ross		Squad #7	201802126	☐ Abuse	O.L.	☐ Injury
Samo Tross		Squad	201002120	110000		
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Monday, 03/19/2018 2:35 PM		East 189th Street between Washington Ave and Third Ave in the Bronx; Outside		48	9/19/2019	9/19/2019
		of § 87(2)(b)	•	<u> </u>		
Date/Time CV Reported		CV Reported At:	How CV Reported	: Date/Tin	ne Received at CC	RB
Mon, 03/19/2018 3:23 PM		CCRB	Phone	Mon, 03	/19/2018 3:23 PM	1
Complainant/Victim	Type	Home Addre	ess			
Witness(es)		Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Janert Gil	18305	951771	048 PCT			
2. An officer			048 PCT			
3. SGT Nicholas Mcgarry	00429	949302	048 PCT			
4. POM Miguel Donovan	27770	950341	048 PCT			
Witness Officer(s)	Shield N	o Tax No	Cmd Name			
1. POM Robert Wichers	16306	958169	048 PCT			
2. POF Sandra Martinez	04343	955139	048 PCT			
3. POM Richard Mcknight	07955	955170	048 PCT			
Officer(s)	Allegatio	on		In	vestigator Recor	nmendation
A.POM Miguel Donovan	and Thir	esy: On East 189th Street d Avenue in the Bronx, a spoke discourteously to	Police Officer Migu			
B.POM Janert Gil	Abuse: C	Outside of § 87(2)(b) anert Gil drew his gun.	in the Bronx, Pol	ice		
C.SGT Nicholas Mcgarry	Discourte Sergeant	esy: Outside of \$87(2)(b) Nicholas McGarry spok	in the Bron ke discourteously to			
D.SGT Nicholas Mcgarry		utside of § 87(2)(b) McGarry used physical	in the Bronx, Serg			

Officer(s)	Allegation	Investigator Recommendation
E.SGT Nicholas Mcgarry	Force: Outside of \$87(2)(b) in the Bronx, Sergeant Nicholas McGarry used physical force against \$87(2)(b)	
F.POM Miguel Donovan	Force: Outside of \$87(2)(b) in the Bronx, Police Officer Miguel Donovan used physical force against \$87(2)(b)	
G.POM Janert Gil	Force: Outside of [87(2)(b)] in the Bronx, Police Officer Janert Gil used physical force against [87(2)(b)]	
H.SGT Nicholas Mcgarry	Force: Outside of \$87(2)(b) in the Bronx, Sergeant Nicholas McGarry used physical force against \$87(2)(b)	
I.SGT Nicholas Mcgarry	Discourtesy: Outside of \$87(2)(b) in the Bronx, Sergeant Nicholas McGarry spoke discourteously to \$87(2)(b)	
J.POM Miguel Donovan	Discourtesy: Outside of \$87(2)(b) in the Bronx, Police Officer Miguel Donovan spoke discourteously to \$87(2)(b)	
K.SGT Nicholas Mcgarry	Discourtesy: Outside of \$87(2)(b) in the Bronx, Sergeant Nicholas McGarry spoke discourteously to \$87(2)	
L.POM Miguel Donovan	Force: Outside of \$87(2)(b) in the Bronx, Police Officer Miguel Donovan used physical force against \$87(2)	
M. An officer	Off. Language: Outside of \$87(2)(b) in the Bronx, an officer made remarks to \$87(2)(b) based upon race.	
N.POM Miguel Donovan	Abuse: Outside of \$87(2)(b) in the Bronx, Police Officer Miguel Donovan threatened with the use of force.	

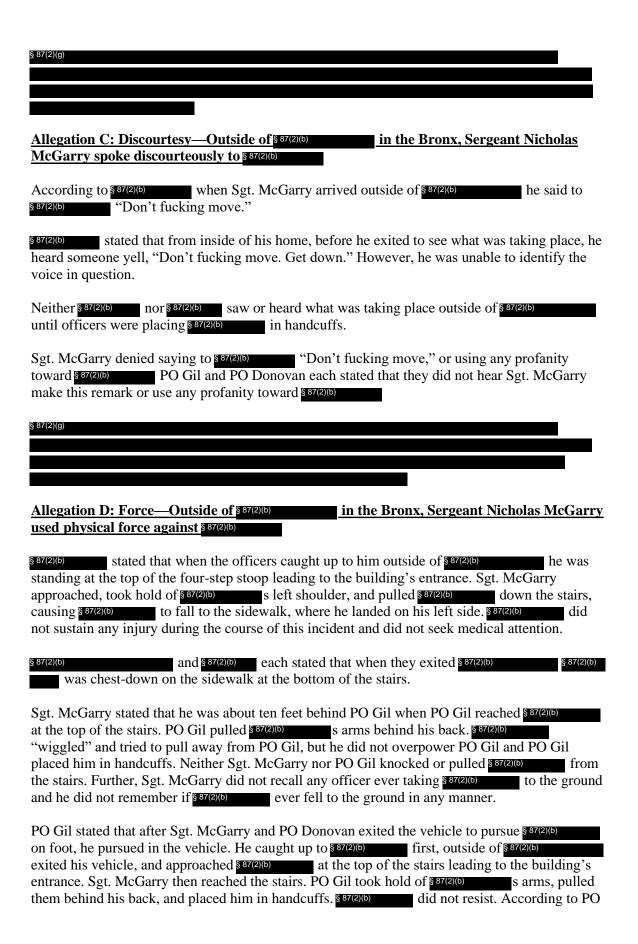
Case Summary



officer use profanity toward \$87(2)(b) However, he was approximately one half-block from when the pursuit began, and he did not follow \$87(2)(b) and the officers.
The investigation was unable to obtain a statement from \$87(2)(b) who was with when the police pursuit began.
An anonymous 911 caller reported the assault in question. She stated (Board Review 04) that she observed the fight from inside of her parked vehicle and did not exit the vehicle. The individuals involved in the fight dispersed and fled around a corner, and the 911 caller did not see what happened to any of these individuals after they moved out of sight. She did not see police officers arrive on scene and did not see any interaction between police officers and the individuals involved in the fight.
According to PO Donovan (Board Review 05), when he exited his vehicle in order to stop he said, "Police. Stop." However, he denied using the word "motherfucker" or using any profanity at all. Sgt. McGarry (Board Review 06), consistent with PO Donovan, stated that he exited the vehicle shortly after PO Donovan. He was about twenty feet behind PO Donovan when they began to pursue \$\frac{87(2)(0)}{2}\$ on foot. Sgt. McGarry did not hear PO Donovan say to \$\frac{87(2)(0)}{2}\$ "Stop, motherfucker," or use any profanity. He did not hear PO Donovan say anything at all to \$\frac{87(2)(0)}{2}\$ PO Gil (Board Review 07) stated that upon exiting the vehicle, PO Donovan said to \$\frac{87(2)(0)}{2}\$ "Police." He also told \$\frac{87(2)(0)}{2}\$ to stop. However, PO Gil did not hear PO Donovan use the word "motherfucker" or use any other profanity.
As noted, the investigation obtained video of \$87(2)(b) striking \$87(2)(b) on Washington Avenue, but no video capturing the police pursuit. Further, the officers were not assigned Body-Worn Cameras at the time of the incident.
§ 87(2)(g)
Allegation B: Abuse of Authority—Outside of 887(2)(b) in the Bronx, Police Officer Janert Gil drew his gun.
stated that when he reached the doorway to \$87(2)(b) in the Bronx, the officers' marked vehicle came to a stop outside of the building. When the three officers exited, PO Gil drew his gun.
Neither (Board Review 08), nor (\$87(2)(b) (\$87(2)(b) s mother) (Board Review 09), nor (\$87(2)(b) (\$87(2)(b) s neighbor at the time of the incident) (Board Review 10), each of whom exited (\$87(2)(b) and witnessed later portions of the arrest, was in a position to witness this portion of (\$87(2)(b) s encounter with the officers.

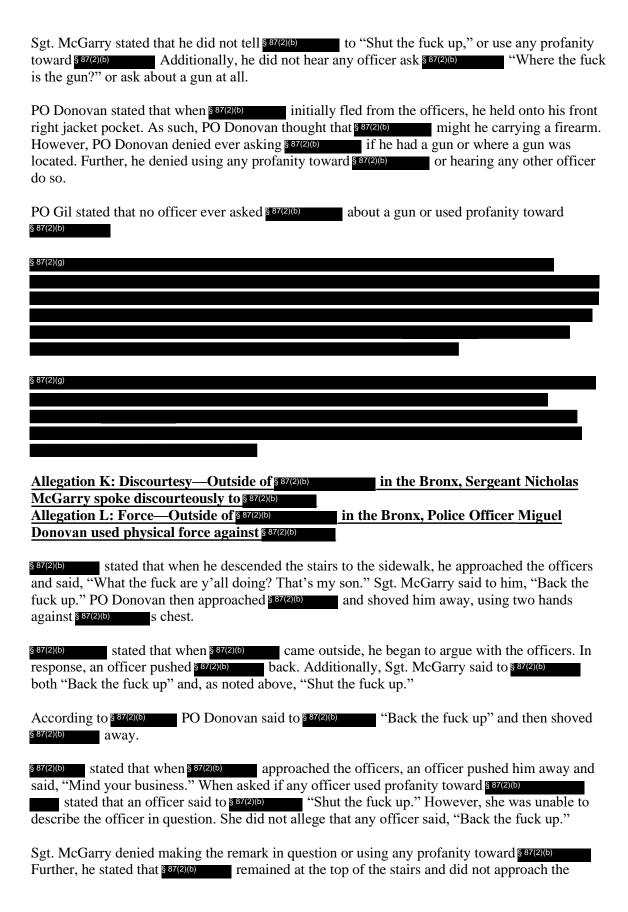
PO Gil denied ever drawing his firearm. Sgt. McGarry stated that he never saw PO Gil draw a firearm and PO Donovan did not recall PO Gil ever drawing a firearm.

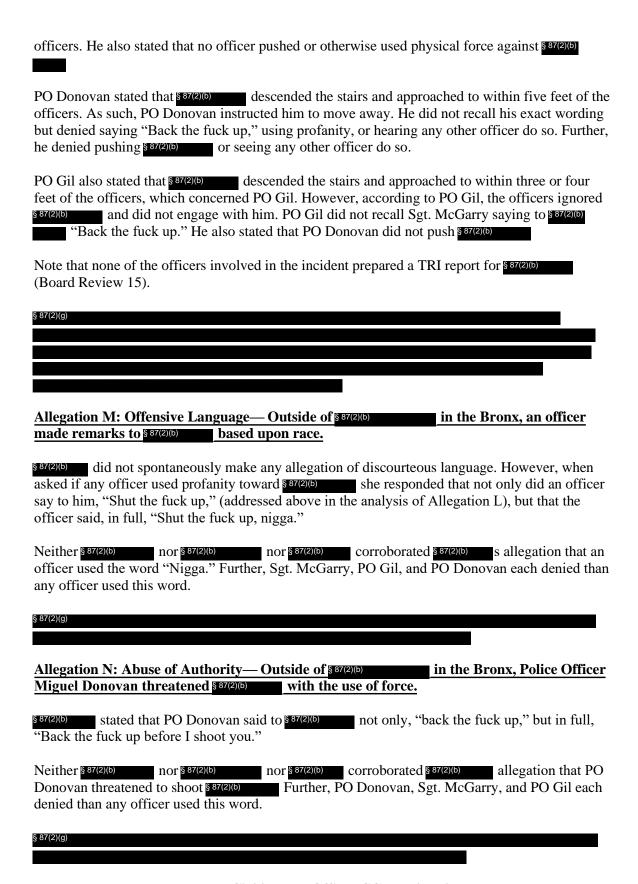
The Field Team visited the incident location and discovered that there are no video cameras positioned to capture the incident in question.



never fell to the ground at all.
PO Donovan stated that when he reached the corner of Cyrus Place and Third Avenue, he saw in front of \$87(2)(b) PO Gil and Sgt. McGarry approached \$37(2)(b) took hold of him, and moved him down the stairs to the sidewalk. \$37(2)(b) did not fall from the stairs or fall to the sidewalk, he never went to the ground, and the officers never took him to ground. Although \$87(2)(b) resisted the officers' efforts to handcuff him by shaking his shoulders and twisting his upper body, the officers pulled his arms behind his back and placed him in handcuffs.
Note that none of the officers involved in the incident prepared a TRI report for \$87(2)(b) (Board Review 11).
§ 87(2)(g)
Allegation E: Force—Outside of \$87(2)(b) in the Bronx, Sergeant Nicholas McGarry used physical force against \$87(2)(b) in the Bronx, Police Officer Miguel Donovan used physical force against \$87(2)(b) in the Bronx, Police Officer Miguel Allegation G: Force—Outside of \$87(2)(b) in the Bronx, Police Officer Janert Gil used physical force against \$87(2)(b) in the Bronx, Police Officer Janert Gil
stated that after he fell to the sidewalk, before he was placed in handcuffs, the three officers each kicked him. Together, in total, they kicked him four times on the head and twice on the back. He was chest-down and was attempting to lift himself from the sidewalk, his arms at his sides, while the officers kicked him. As noted above, \$87(2)(b) did not sustain any injury during the course of this incident and did not seek medical attention.
stated that when he exited \$87(2)(b) was chest-down on the sidewalk, His hands were free and he was attempting to turn himself over. PO Donovan then kicked \$87(2)(b) three times on the left side of his ribs.
also stated that while \$87(2)(b) lay chest-down on the sidewalk, an officer kicked him, but she could not describe the officer in question.
According to \$87(2)(b) when she exited the building she saw \$87(2)(b) lying on the sidewalk. A female officer punched \$87(2)(b) in the ribs, in the stomach, and on the head. She did not know how many times this officer struck \$87(2)(b)
Note that while PO Sandra Martinez (Board Review 12), PO Robert Wichers (Board Review 13), and PO Richard McKnight (Board Review 14) of the 48 th Precinct Anti-Crime team responded to the scene, it is undisputed that they arrived after [587(2)(5)] was placed in handcuffs.
Sgt. McGarry, PO Donovan, and PO Gil each stated that Sgt. McGarry and PO Gil handcuffed without any use of force beyond pulling his arms behind his back. They denied ever kicking him.

As noted above, none of the officers involved in the incident prepared a TRI report for \$87(2)(6)
§ 87(2)(g)
Allegation H: Force—Outside of \$87(2)(b) in the Bronx, Sergeant Nicholas McGarry used physical force against \$87(2)(b)
stated that after officers kicked him, and before they placed him in handcuffs, an officer placed what felt to \$37(2)(b) like a knee on \$37(2)(b) s head, using his full bodyweight to hold \$37(2)(b) s head down against the sidewalk. He maintained this pressure for thirty to forty-five seconds.
stated that when he came outside, before PO Donovan kicked \$87(2)(b) an officer placed the bottom of his foot on \$87(2)(b) s head, holding \$97(2)(b) s head down. However, \$87(2)(b) s description of the officer in question corresponded to the pedigrees of both Sgt. McGarry and PO Gil. However, \$87(2)(b) stated that when she came outside, \$87(2)(b) was lying chest-down on the sidewalk, and Sgt. McGarry's foot was on \$87(2)(b) s head.
Sgt. McGarry denied ever placing a foot or knee on \$87(2)(b) head, and stated that no officer did so. PO Gil and PO Donovan also denied that any officer ever placed a foot or knee on \$87(2)(b) s head.
§ 87(2)(g)
Allegation I: Discourtesy—Outside of \$87(2)(b) in the Bronx, Sergeant Nicholas
McGarry spoke discourteously to \$87(2)(b) Allegation J: Discourtesy—Outside of \$87(2)(b) Donovan spoke discourteously to \$87(2)(b) in the Bronz, Police Officer Miguel
According to \$87(2)(b) when officers kicked \$87(2)(b) said that he was not moving and asked why the officers were kicking him. In response, Sgt. McGarry and PO Donovan each said to \$87(2)(b) "Shut the fuck up." Additionally, PO Donovan then said to "Where the fuck is the gun?"
stated that officers asked him, "Where's the gun?" However, he made no allegation that any officer used profanity in this context. As addressed below, he stated that Sgt. McGarry told \$87(2)(b) to "Shut the fuck up."
When asked if any officer used profanity toward \$87(2)(b) so, but she did not remember what was said. \$87(2)(b) did not allege that any officer used profanity toward \$87(2)(b)





•	§ 87(2)(b), § 87(2)(g)
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	_
	has been a party to two other CCRB complaints (Board Review 17):
•	17 1 1 1 1 1 1 1 1 1
•	Sgt. McGarry has been a member of service for eight years and this is the first CCRB
	complaint to which he has been a subject (Board Review 18).
•	PO Gil has been a member of service for six years and has been a subject in four other
	complaints with five allegations, none of which have been substantiated (Board Review
	19).
	○ §87(2)(b), §87(2)(g)
•	PO Donovan has been a member of service for seven years and has been a subject in
	eight other CCRB cases with eighteen allegations (Board Review 20).
	 Case #201301730 involved a substantiated frisk allegation. The Board
	recommended Instructions and the NYPD imposed Instructions.
	o Case #201508223 involved a substantiated physical force allegation (specifically,
	a punch). The Board recommended Command Discipline B and the NYPD imposed no penalty.
	\$87(2)(b), \$87(2)(g)
	Mediation, Civil and Criminal Histories
•	This complaint was not suitable for mediation.
•	As of September 14, 2018, the New York City Office of the Comptroller had no record of
	a Notice of Claim being filed in regard to this incident (Board Review 21).
•	According to the Office of Court Administration, \$87(2)(6) has no history of
	convictions in New York City.
•	§ 87(2)(b)

Squad No.:			
Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date